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**RE: CropLife Canada comments on the proposed amendments to *Ontario Regulation (63/09 General) (ERO 019-0601)***

CropLife Canada would like to thank you for the opportunity to provide comments on the proposed amendments to *Ontario Regulation 63/09* made under the *Pesticides Act*.

CropLife Canada is the trade association representing the manufacturers, developers and distributors of plant science innovations – pest control products and plant biotechnology – for use in agriculture, urban and public health settings.

On November 27, 2019, CropLife Canada submitted comments to the Government of Ontario supporting the proposed changes to the *Pesticide Act* that would see the elimination of the Ontario Pesticides Advisory Committee (OPAC) and the commitment to instead promptly classify new products as they are approved by Health Canada's Pest Management Risk Agency (PMRA). We appreciate the opportunity to provide further comments related to proposed changes to *Ontario Regulation 63/09* and the associated guidance that would support these regulatory changes.

**Alignment with the federal regulator**

CropLife Canada strongly agrees with the statement in the proposal summary that Health Canada's PMRA is resourced and equipped to review and register pesticides for all of Canada, something all other provinces have recognized. As such, we strongly support of the proposal to harmonize Ontario's pesticide classification scheme with the categories recognized under the *Pest Control Products Act (PCPA)*.

In the spirit of harmonization, we are of the opinion that the Government of Ontario should have consolidated the product classes even further by eliminating the class for neonicotinoid treated seeds and instead referring to the designation assigned to products at the federal level. That said, CropLife Canada is supportive of the proposed amendments to the restrictions on the sale and use of neonicotinoid treated seeds and recognizes that Ontario would consider further amendments to align with the federal government once Health Canada concludes its ongoing neonicotinoid-related reviews.

We remain disappointed that the proposed regulations retain the provisions that prohibit the sale and use of certain pesticides for application in, on or over land (the "cosmetic" ban). The continuation of this non-science-based restriction runs counter to the very principle that the amendments to Ontario's pesticide regulation endorses – that is, eliminating red tape and duplication through regulatory alignment and science-based regulation. All pest control products registered in Canada, regardless of whether the pesticide is identified as a biopesticide, non-conventional or conventional and whether they are intended for agriculture, lawn and garden, forestry, or other uses, have been assessed by the PMRA and must meet the same standards of safety to human health and the environment.

## The “allowable list”

Since 2009, the Government of Ontario has been maintaining a list of active ingredients that can be used in, on, or over land under Ontario’s “cosmetic” pesticides ban. This list, previously referred to as Class 11, is now referred to as the “List of Active Ingredients Authorized for Cosmetic Uses”.

CropLife Canada is concerned with the provisions that provide authority to the Director to identify active ingredients to add to this list, whereby the Director conducts a review of the active ingredient followed by a 30-day consultation period through the Environmental Registry of Ontario (ERO). The approach described in subsection 17(1) paragraph 2 (ii) of the proposed amendments is duplicative of the work already performed at the federal level, as the only active ingredients eligible for consideration must have first been approved by PMRA as a biopesticide or approved under the non-conventional pesticide directive (DIR2012-01)<sup>1</sup>. Presumably, the Director will then use the same criteria used by the PMRA in DIR2012-01 (as noted in the Guide to Pesticide Classes<sup>2</sup>) to determine if active ingredients are eligible for the list. It is unclear what additional information the Director might use to inform decisions that was not already considered by the PMRA and the qualifications they would have to confidently make such an assessment. In addition, the proposed consultation requirement is duplicative of the existing federal process, as all stakeholders have the opportunity to comment on PMRA’s registration decisions.

CropLife Canada objects to the perpetuation of non-science-based restrictions of pesticides for use on, in or above land (the “cosmetic” ban). However, if this dichotomy of approaches cannot be addressed, we recommend that all products registered by the PMRA as a biopesticide or non-conventional pesticide under DIR2012-01 be automatically added to the “List of Active Ingredients Authorized for Cosmetic Uses”, rather than subjecting them to a second evaluation of the same information at the provincial level. This approach would be consistent with the classification process taken by other provinces. For example, although we remain similarly opposed to the province of Quebec’s ongoing restrictions on domestic use pesticides, under the *Règlement sur les permis et les certificats pour la vente et l’utilisation de pesticides*<sup>3</sup>, all active ingredients considered to be biopesticides approved by the PMRA are automatically accepted into the class for domestic products (class 5). It should be noted that in Québec, non-conventional, semiochemicals and microbial pesticides are all considered within the biopesticides distinction.

Furthermore, CropLife Canada is seeking confirmation that new active ingredients that would not be deemed eligible for consideration on the list will be available immediately and automatically upon federal registration. Specifically, we are seeking confirmation that active ingredients considered exceptions to the “cosmetic” pesticide ban for uses related to agriculture, golf courses, forestry, and etc. will not require further review by the Director or consultation on the ERO.

## Domestic class requirements

The stated objective of removing duplication and aligning with the federal pesticide classes is both sound and commendable with respect to reducing duplication and red-tape. However, simply reducing the number of classes is insufficient if the individual requirements for the old classes continue to exist.

Under the proposed amendments, four classes (Class 5, 6, 7 and 8) will be consolidated into a single class for domestic products (Class D), but rules and restrictions related to the storage and display for certain products within this class will continue to exist. The unintended result is three subclasses within Class D. If implemented as written, the amendments will unnecessarily complicate communication between registrants and vendors,

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<sup>1</sup> [DIR2012-01](#) Guidelines for the Registration of Non-Conventional Pest Control Products

<sup>2</sup> As noted in the [Guide to Pesticide Classes](#) that accompanied the proposed regulatory amendments.

<sup>3</sup> [Règlement sur les permis et les certificats pour la vente et l’utilisation de pesticides](#)



increasing the regulatory burden on all parties – including government – by creating uncertainty about what is expected of both those being regulated and those regulating. To make the proposal workable, it is imperative that the proposed amendments are revised to remove licensing, storage and display requirements for Class D products, where appropriate, to reflect true harmonization with the federal classification system. The amendments should simplify, not complicate, the current process in order to avoid mass confusion and an even more onerous regulatory environment than what currently exists.

The proposed changes to the domestic classes also add additional complexity for establishments who do not have a pesticide vendor license. While vendors currently require a licence for the sale of Class 5 pesticides, they do not require a license for the sale of Class 6 pesticides (including products like insect repellent, ant traps, mosquito coils, etc.) that may be sold at grocery and convenience stores, and pharmacies. The amendments propose that all vendors would now require a licence for the sale of Class D pesticides. In this regard, the consolidation into a single class is not helpful and does not align with the approaches in other provinces. For example, in Saskatchewan, only vendors that sell commercial and/or restricted class pesticides are required to have a pesticide vendor licence. CropLife Canada is concerned that the proposed amendment will increase the burden on businesses who currently sell Class 6 pesticides exclusively, and on consumer access to pesticides if a retailer chooses to stop selling these products due to this new requirement. We recommend that a pesticide vendor license not be a requirement for the sale of Class D pesticides.

We have attached a summary of our comments with additional questions and recommendations to improve the proposed amendments.

In conclusion, we would like to reiterate our appreciation for the opportunity to provide input into this important consultation. If you have any questions or comments, please do not hesitate to contact us.

Kind regards,

A handwritten signature in black ink, appearing to read "D.Prouse".

Dennis Prouse  
Vice President, Government Affairs

A handwritten signature in blue ink, appearing to read "Darell Pack".

Darell Pack  
Director, Provincial Regulatory Affairs and Stakeholder Relations

Section	Text	Comment
General comment	The term “cosmetic” throughout the regulations	Consistent with our comments on the amendments to the <i>Pesticide Act</i> , CropLife Canada suggests that the term “cosmetic”, which is used to refer to certain land uses of pesticides, be removed from the regulations (i.e., sections 16, 17, 18) as what may be deemed cosmetic (defined as non-essential in the <i>Act</i> ) is subjective and there are no sound scientific criteria to support this definition.
1(1)	“listed active ingredient”	There have been instances when the PMRA has changed the name of an active ingredient and this has not been reflected on the “allowable list” (i.e., insecticidal soaps named “Alkanolamine salts of fatty acid” are now named “Triethanolamine salts of fatty acids”). CropLife Canada is seeking clarification on the process that the Government of Ontario will follow to maintain an updated “allowable list”.
17 (1)	Listed active ingredients, cosmetic purposes	CropLife Canada recommends the title of this section be amended to “listed active ingredients” to match the definition in section 1(1) of the proposed regulations.
17(1)1	1. An active ingredient is appropriate for use for a cosmetic purpose only if it is contained in a Class B, C or D pesticide with a label that indicates at least one use that is not mentioned in subsection 7.1 (2) of the Act.	It is unclear what subsection 17 (1) 1 is trying to communicate. We recommend clarifying the wording of this section.
17(1)2(i) and (ii)	i. the active ingredient is a biopesticide ii. based on consideration of the following factors, the active ingredient poses a low risk to human health and the environment: A. to E.	We recommend that any product approved by the PMRA under directive DIR2012-01 be automatically added to the “List of Active Ingredients Authorized for Cosmetic Uses”, instead of there being a second evaluation of the same information at the provincial level.
17(2)	The following persons may submit to the Director a request that the Director determine whether an active ingredient is appropriate for use for a cosmetic purpose	Many of the delays our members experience with the current classification process can be linked to responsibilities of the Director. If implemented as written, we have concerns that our members will continue to experience a delay in introducing new products to the marketplace in Ontario compared to other provinces, where products are available immediately for sale and use upon federal registration.

17(2)	The following persons may submit to the Director a request that the Director determine whether an active ingredient is appropriate for use for a cosmetic purpose	Certain conventional pesticides were registered before the PMRA released the registration process for non-conventional active ingredients, and some of these registrations may meet the criteria for non-conventional active ingredients. We recommend registrants have an opportunity through 17(2) to submit a request for conventional active ingredients to be allowed on the “List of Active Ingredients Authorized for Cosmetic Uses”.
96, 98(2) and 101	<p>A person is exempt from section 6 of the Act with respect to the sale, offer for sale or transfer of any of the following pesticides:</p> <ol style="list-style-type: none"> <li>1. A Class D pesticide that is a paint, stain, sealer or wood preservative, if no food is prepared, sold or stored at the sales outlet where the pesticide is sold or transferred.</li> <li>2. Class D pesticide that is a personal insect repellent or rodenticide.</li> <li>3. A pesticide that is to be transported out of Ontario.</li> </ol>	These amendments remove the exemption that vendors selling Class 6 pesticides had from requiring a vendor license (previously under 96(1)4). There are many products <a href="#">currently in class 6</a> not captured in the proposed section 96. This class generally represents pesticides in containers of < 1kg (i.e., ant traps, insecticidal soaps, mosquito coils) that may be sold at grocers, corner stores, and pharmacies, among other locations. Many businesses made the decision to sell only Class 6 pesticides because they did not need a license. CropLife Canada is concerned that this amendment will increase the burden on businesses who sold this class of pesticide due to the fact that it does not require a license and that it will also have a negative impact on consumers if a retailer chooses to stop selling due to this new requirement.
97(1)	<p>A pesticide is prescribed for the purposes of subsection 7.1 (4) of the Act if it meets one or more of the following criteria:</p> <ol style="list-style-type: none"> <li>1. The pesticide is a Class B, C or D pesticide with a label that indicates that its only active ingredients are listed active ingredients.</li> </ol>	When reading this section in isolation, it seems to infer pesticides that are allowed to be sold. However, when read in the context of Section 7.1(4) of the Act, it seems to infer that these products cannot be sold. This language is confusing and should be clarified.
101	An outlet representative mentioned in subsection 99 (1) or a licensed vendor of the Limited class who sells or transfers a Class B or D pesticide that meets the following criteria shall ensure that information in a form approved by the Director regarding the use of the pesticide is given to a purchaser or transferee of the pesticide	Similar documentation is needed to sell Class 7 pesticides (products that had a mixture of acceptable uses e.g., indoor and also some land uses). With the proposed amendments to the class distinctions, compliance requirements will be very difficult to communicate to vendors.

103(2)	That a Class D pesticide is displayed in a manner that presents minimal hazard to children.	The storage and display limitations now apply to all domestic pesticides. This is not appropriate as limitations are currently applied only to Class 5 pesticides.
103(3)	That a Class A, B, C or D pesticide is not displayed on a shelf or in a display case that is adjacent to or above a shelf or display case containing food or drink intended for human or animal consumption or any other commodity which, if contaminated by the pesticide, could cause injury or damage to property or to plant or animal life or to any person.	This requirement is burdensome if interpreted to mean that pesticides cannot be stored adjacent to or above fertilizer, garden supplies, soil, etc. We recommend that this text be amended for clarification, such as “That a pesticide be managed to ensure that human or animal food, beverages and personal use items are not subject to undue risks of pesticide contamination.”
112(1)	Fire department notification	Given that under the proposal all class D vendors must have a vendor’s license, fire department notification would now apply to grocery and corner stores, and pharmacies, as well as other sales locations. The corresponding increase in annual notices to fire departments will increase paperwork management on the part of fire departments. We proposed that a pesticide vendor license not be a requirement for the sale of Class D pesticides. This would harmonize these requirements with other provincial jurisdictions.
<a href="#">Guide to Pesticide Classes</a> Overview	In 2020, the Ontario-specific application process to classify pesticides before they are allowed for sale and use was eliminated, allowing pesticides to be immediately available for sale and use in Ontario once they are federally registered	This is only true if the active ingredient is already on the allowable list. For brand new active ingredients for certain land uses, there will still be an additional red-tape process whereby the Director conducts a review of the active ingredient followed by a 30-day consultation period on the Environmental Registry of Ontario.
<a href="#">Guide to Pesticide Classes</a> 3. Cosmetic Pesticide Ban	Ontario's cosmetic pesticides ban is in place to protect Ontario families and children from the unnecessary risks of cosmetic pesticides by only allowing the use of certain low risk pesticides for controlling weeds and pests in lawns and gardens.	All pest control products in Canada, regardless of whether the pesticide is identified as a biopesticide, non-conventional or conventional and whether they are intended for agriculture, lawn and garden, forestry, or other uses, have been assessed by the PMRA and must meet the same standard of safety to human and the environment. We strongly recommend that this statement be eliminated or revised to not cause undue concerns to consumers.

<p><a href="#">Guide to Pesticide Classes</a> 4. Ontario's Allowable List</p>	<p>Pesticides registered as conventional pesticides by PMRA will not be considered in the Director's decision when following the rules set out in section 17 of the Regulation to determine whether an active ingredient is appropriate for use for a cosmetic purpose.</p>	<p>Same comment noted for section 17(2). Certain conventional pesticides were registered before the PMRA released the registration process for non-conventional active ingredients, and some of these registrations may meet the criteria for non-conventional active ingredients. We recommend registrants have an opportunity through 17(2) to submit a request for conventional active ingredients to be allowed on the "List of Active Ingredients Authorized for Cosmetic Uses".</p>
<p><a href="#">Guide to Pesticide Classes</a> 6. Using pesticides around your home</p>	<p>The changes in 2020 to Ontario's <i>Pesticide Act</i> and the Regulation will not affect the way you buy pesticides from a licensed vendor. However, as a result of changes, retail locations that do not have a licence to sell pesticides will be able to sell fewer pesticides.</p>	<p>CropLife Canada has concerns that the proposed changes will have a negative impact on consumers if a retailer chooses to stop selling products previously found in Class 6 due to the new licensing requirements.</p>
<p><a href="#">Guide to Pesticide Classes</a> Appendix A</p>	<p>Proposed List of Active Ingredients</p>	<p>Bacillus thuringiensis subsp. galleriae strain SDS-502 is currently listed in Class 11 but does not appear in the proposed List of Active Ingredients Authorized for Cosmetic Uses. We are seeking confirmation that should the proposed "List of Active Ingredients Authorized for Cosmetic Uses" be retained, that it will reflect the most up to date Class 11 list.</p>
<p><a href="#">Guide to Pesticide Classes</a> Appendix D</p>	<p>Vendor Guidance Charts</p>	<p>To improve the utility of the decision tree, we recommend indicating that it is to be used only after the user has determined that the pesticide is not otherwise exempt under the regulation (i.e., reference to the sections of the regulation that includes exemptions for pesticides) or include Yes/No for possible exemptions that lead to the SELL decision.</p>
<p><a href="#">Guide to Pesticide Classes</a> Appendix D</p>	<p>Vendor Guidance Charts</p>	<p>Using the guidance chart, animal repellents to protect trees, shrubs, gardens and other outdoor areas have been missed and would essentially be banned if they do not contain a listed active. These products were not banned under current regulations and there do not appear to be any exemptions or exceptions that apply to animal repellents in the proposed regulation.</p>